RAJAH RAMACHANDRAN

v.

PERBADANAN BEKALAN AIR PULAU PINANG SDN BHD

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 22-716-2003]
2 MARCH 2004

PUBLIC UTILITIES: *Water - Water bill - Recovery of money owing - Powers of water authority - Whether could cut off water supply - Whether should take "such other means as it thinks fit and proper" - Water Supply En 3/1998 (Penang), s. 49(1)*

WORDS & PHRASES: *"such other means as it thinks fit and proper" - Water Supply En 3/1998 (Penang), s. 49(1)*

The defendant, licensed to supply water to consumers under the Water Supply Enactment 3/1998 (Penang) ('the Enactment'), cut off the plaintiff's water supply on the basis that the plaintiff had refused to settle his water bill. From the year 1999 onwards, the defendant had issued a bill every two months to the plaintiff - that the plaintiff promptly paid - which never exceeded RM25. However, in September 2002, the plaintiff received a bi-monthly bill for RM3,047.02, which the defendant averred resulted from a review of charges based on previous wrong readings taken by the meter reader from July 1999 to September 1999 (the period in dispute). Having issued a writ against the defendant, the plaintiff took out a summons and prayed for: (a) a mandatory interim injunction preventing the defendant or its servant or agent from cutting off the water supply to the plaintiff's premises; (b) the costs of re-connecting the water supply to be borne by the defendant; and (c) costs.

Held:

[1] On the facts, there was no evidence or even any satisfactory explanation as to why the meter reader had consistently wrongly read the meter from July 1999 to September 1999. The defendant's lack of any satisfactory explanation was a clear indicator that it did not know what really happened and that its attempt to cut off the water supply was an oppressive act done with the intention of pressurising the consumer into submission and making the payment. Section 49(1) of the Enactment allows the defendant to cut off the water supply or to take such other means as it thinks fit and proper. Since there is a provision allowing the defendant to take less

drastic action by resorting to "such other means as it thinks fit and proper", this was an invitation to the defendant to act as a reasonable man would. The defendant ought to have sued the consumer in court and proved its entitlement to the disputed sum. This was all the more necessary when the defendant itself was finding it difficult to show how the wrong readings had occurred. The Draconian act of cutting off the water supply was too harsh in the circumstances of this case. It must be understood that a public body endowed with a statutory discretion in enforcing its rights must exercise such discretion as would impose the least convenience to the public. It ought not to act arbitrarily or unjustly unless such drastic action was warranted. (pp 202 f-g & 203 c-f)

[Order in terms of plaintiff's application granted.]

Legislation referred to:
Water Supply En 3/1998 (Penang), ss. 35(1), 40, 49(1)

For the plaintiff - Fathima Idris; M/s Idris & Assoc
For the defendant - Rosli Ismail (Jannu Babjan); M/s Hoon & Rosli

Reported by Suresh Nathan

JUDGMENT

RK Nathan J:

Facts

The defendant is licenced to supply water to consumers under the Water Supply Enactment 1998 (the Enactment). The licensee is under a statutory duty, on application in writing by the owner or occupier of any premises (see s. 35(1) of the said Enactment), subject to s. 40, to supply water. Sometime in October 2003 the defendant cut off the plaintiff's water supply on the basis that the plaintiff had refused to settle his water bill.

The Application

Having issued out a writ against the defendant, the plaintiff took out a summons and prayed for:

(a) a mandatory interim injunction preventing the defendant or it's servant or agent from cutting off the water supply to the plaintiff's premises;

(b) the costs of re-connecting the water supply to be borne by the defendant;

(c) costs.

Findings Of The Court

The plaintiff supported his application with an affidavit in which he stated that sometime in 1999 he requested from the defendant a supply of water to his premises. The defendant having received his written application opened an account in the name of the plaintiff namely account No. 98680142026 with an ID No: of 1996-000-233-5. The defendant then subsequently issued a bi-monthly bill to the plaintiff which never exceeded RM25 for every two months. The plaintiff accordingly promptly paid each bill. Suddenly in September 2002 the plaintiff was surprised to receive a bi-monthly bill for RM3,047.02. The plaintiff then lodged a formal complaint with the defendant's branch office at Jawi and the said complaint was then referred to the defendant's head office at KOMTAR.

The plaintiff also went to the defendant's office at KOMTAR and met with the defendant's officers and he specifically named two such officers who were unable to assist him and explain why his bill had risen meteorically. However the said officers insisted that the plaintiff settle the exorbitant bill.

The plaintiff refuted the said bill but was willing to pay the subsequent bills. However the defendant's officers refused to accept payment of the subsequent bills unless the sum of RM3,047.02 was settled.

The defendant however agreed to conduct an examination of the pipe leading to the plaintiff's premises and did so sometime in March 2003. As a result thereof the defendant sent a letter dated 27 March 2003 to the plaintiff informing him that there was no leakage of the pipe and insisted on full payment of the said sum by the plaintiff. When the plaintiff refused to settle that bill but was willing to settle the subsequent bills, the defendant cut off the supply of water to the plaintiff s premises in October 2003 just before the plaintiff could celebrate Deepavali. The plaintiff then lodged a complaint with the Consumers Association of Penang (CAP). CAP then fixed an appointment for the plaintiff to meet with the defendant's Director of Corporate Services with regard to his problem. The said director then informed the plaintiff in the presence of the CAP official that if he would pay RM500 as the first installment payment in settlement of the sum of RM3,047.02 he would order the re-connection of the water supply. The plaintiff refused to accept the said suggestion.

On 22 October 2003 the defendant again examined the water meter at the plaintiff's premises and issued a meter test certificate. The plaintiff averred that only he and his wife reside at the said premises and that neither has used the water in excess and that prior to this error, their bi-monthly bill had never

exceeded RM25. In spite of having sent a legal notice through his solicitors demanding restoration of the water supply the defendant had failed and refused to do so. The plaintiff related the sufferings he and his wife had undergone without water and that they had to rely on the help of their good neighbours for the daily supply of water. The plaintiff's affidavit was supported by an affidavit from the CAP official confirming what the plaintiff had related.

The defendant filed an affidavit in reply through it's corporate services manager in which he averred that he has personal knowledge of facts deposed to in the said affidavit. He averred that on or about 24 May 1999 the defendant changed the plaintiff's meter. The defendant had fixed two different types of meters to different consumers' houses. One type of meter was called 'one overflow' whereby the meter reader would add a '0' to the number registered at the time of reading. The other type of meter was called 'two overflow' whereby the meter reader would add two '00' to the number registered at the time of reading the meter. Both the meters had a diameter of 1/2 inch PSM but the difference was in the 'overflow'. He alleged in his affidavit that the meter fixed to the plaintiff's house had a 'two overflow' but the meter reader who read the meter from July 1999 to September 2002 (during the period of dispute), had wrongly read the meter as 'one flow'. Realising the mistake the defendant reviewed the charges based on the previous readings and exhibited a table which was not explained to the court.

The meter reader who discovered this so called erroneous calculations did not affirm any affidavit. The said manager of corporate services did not affirm how he obtained this information since Encik Rosli for the defendant had confirmed that the said manager did not read the meter. There is no evidence or even any satisfactory explanation as to why the meter reader had consistently from July 1999 to September 2002 wrongly read the meter. If there was an error for one month, it is understandable but the error was repeated each month for 39 months.

To my mind the defendant's lack of any satisfactory explanation is a clear indicator that it does not know what really happened and that the attempt by the defendant to cut-off water supply was an oppressive act done with the intention of pressurising the consumer into submission and to make the payment.

Section 49(1) of the Enactment under which the defendant acted by cutting off water supply to the plaintiff's premises reads as follows:

49(1) If any consumer who is liable to:

(a) pay for the water supplied;

(b) pay for the cost of services rendered in connection with the supply of water; or

(c) pay any deposit under section 45,

fails to settle the amount due within fourteen days from the date of presentation of the bill, it shall be lawful for the licensee, if he so decides, to disconnect the supply of water to such consumer by severing the service pipe or by taking such other means as he thinks fit and proper.

The section allows the defendant to cut the water supply OR by taking such other means as it thinks fit and proper.

Since there is a provision for the defendant to have taken a less drastic action by resorting to 'such other means as it thinks fit and proper' , I view this as an invitation to the defendant to act as a reasonable man would. The defendant ought to have sued the consumer in court and proved it's entitlement to the disputed sum. This is all the more necessary when the defendant itself is finding it difficult to show how the wrong readings had occurred. Surely the consumer is entitled to an explanation as to how the wrong reading had occurred.

The Draconian act of cutting off supply was too harsh in the circumstances of this case. If the defendant is entitled to only cut off water supply for non-payment the Act would not have provided for the lesser alternative cause of action the defendant could have resorted to. It must be understood that a public body endowed with a statutory discretion in enforcing its rights must exercise such discretion as would impose the least inconvenience to the public. It ought not to act arbitrarily or capriciously or unjustly. Nevertheless it must not hesitate to act appropriately where drastic action is warranted like when a consumer without any rhyme or reason refuses to settle his bill.

I therefore granted the plaintiff an order in terms of his application.